

### SAMPLE MUNICIPAL VOTE

Each community should draft its warrant article with the guidance of municipal counsel. The form that these articles take will vary with the means of acquisition, source of funding, type of land, etc. All articles should include the following elements:

- I. Authorization to expend an amount equal to the full acquisition and/or development cost of the project. (All DCS grant programs are *reimbursement* programs, not match programs; therefore, the total project cost must be raised or appropriated through current tax levy or borrowed; project bills paid by the municipality and then a reimbursement request is made to DCS for the grant amount.)
- II. Indication of the source of funding (Conservation Fund, Community Preservation Act Fund, Land Bank Fund general fund, borrowing). M.G.L. Chapter 44, sections 7, 8C, and 12(a) on Municipal Indebtedness, allows cities and towns to borrow in anticipation of reimbursement. It is strongly recommended that the warrant article is prepared with the advice of town counsel, treasurer and accountant to ensure that the appropriate section is noted in the warrant article. These sections permit the municipality to borrow in anticipation of a grant and require that a grant agreement be executed before the treasurer actually obtains the borrowed amount. This assures DCS that the town has 100% of the total project cost, and assures the town that the project need not be completed if the proposal does not receive grant assistance. For further advice, please contact the Department of Revenue, Division of Local Services at (617) 626-2300.
- III. Indication that land is being acquired for conservation and passive outdoor recreation purposes (Chapter 40, Section 8c) or acquired and/or developed for active recreation purposes (Chapter 45, Section 3, for example) and will be in the care and control of the appropriate commission or department.
- IV. Authorization for the conservation commission or recreation department to seek reimbursement under the specific DCS grant and enter any necessary contracts thereto.  
*Self-Help Act:* Chapter 132A, Section 11  
*Urban Self-Help:* Chapter 933 Acts of 1977, as amended  
*Federal Land & Water Conservation Fund:* P.L. 88-568, 78 Stat 897
- V. If a taking is involved in an acquisition project, the conservation commission or recreation commission must, in writing, request the selectmen or city council to take the property via eminent domain.
- VI. Reference to the Community Preservation Act (CPA) or Cape Cod Land Bank Act (LBA), if these funds were used for the purchase of the property. CPA or LBA articles must include authority to convey a perpetual conservation restriction to a qualified holder.

The following is a sample vote authorizing the acquisition of Self-Help land (please refer to IV above for the appropriate grant program or programs). This is intended only as a point of reference. **Municipal Counsel should always be consulted when drafting Town Meeting warrant articles or City Council orders.** The draft article or order must be submitted to DCS for review prior to the Town Meeting or City Council vote

#### **Sample for Self-Help Conservation Acquisition Project**

To see if the CITY/TOWN will vote to appropriate, and authorize the Treasurer with the approval of the Selectmen [describe method of appropriation and/or borrowing according to M.G.L. Chapter 44, note particularly Section 8C], to borrow the sum of \$TOTAL PROJECT COST, for the purpose of purchasing for conservation and passive recreation purposes, by eminent domain or negotiated purchase or otherwise, a certain property together with buildings thereon, known as the PROPERTY NAME consisting of XXX acres, more or less, as shown on a plan entitled "Plan of Land in MUNICIPALITY made by SURVEYING FIRM dated XX/XX/XX"; that said land be conveyed to said CITY/TOWN under the provisions of Massachusetts General Laws, Chapter 40, Section 8c, and as it may hereafter be amended and other Massachusetts statutes relating to Conservation, to be managed and controlled by the Conservation Commission of MUNICIPALITY, and the Conservation Commission be authorized to file on behalf of MUNICIPALITY any and all applications deemed necessary for grants and /or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Self-Help Act (Chapter 132A, Section 11) and/or any others in any way connected with the scope of this Article, and the CITY/TOWN and the Conservation Commission be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of MUNICIPALITY to affect said purchase.

## **Projects Funded through the Community Preservation Act or Cape Cod Land Bank Bill**

The Community Preservation Act (CPA) and the Cape Cod Land Bank Act (LBA) state that land acquired with these funds are to be bound by a permanent restriction. Since a community cannot hold a conservation restriction against itself, a Chapter 184 §31 conservation restriction limiting the use of the interest to the purpose for which the land was acquired (conservation and passive recreation) must be granted to a qualified holder.

Conveying a conservation restriction over “parkland” normally would trigger the formal “Article 97” disposition process. However, it is the opinion of EOEA and the Massachusetts Land Trust Coalition Attorney Referral Panel that: “If a municipality acquires property under the CPA statute, it is required to impose a restriction on the property as a matter of law and thus the imposition of the restriction should be considered part of an integrated plan for dealing with the property. Therefore, the imposition of the restriction should not be considered a “disposition” of an interest in the property within the meaning of Article 97.”<sup>1</sup>

### **Points to Remember:**

1. It is preferable for the municipality to vote to impose the restriction at the same time that it votes to acquire the property, and that the purchase of the property and conveyance of the restriction be a simultaneous closing.
2. As long as a restriction is recorded **after** the recording of the deed of acquisition (even if immediately after), the unrestricted value (and therefore higher value) of the property is used for funding determinations in DCS grant programs.
3. The fact that the funding statute *requires* the restriction may mean that a party seeking a charitable contribution deduction in connection with a bargain sale of property may not be able to use the unrestricted value of the property in calculating the tax benefit.
4. The “proceeds” clause of the conservation restriction must provide that the municipality (as the fee owner) receives all of the proceeds of an extinguishment or taking, and the holder of the conservation restriction receives none of such proceeds. In the event that the land ever is converted to non-conservation use, the municipality would be responsible for replacing the converted property with land of equal or greater monetary value and conservation use and described in the Program Regulations. Applicants should consult with DCS for guidance on drafting conservation restrictions for the appropriate language.

## **Sample Vote Language for Community Preservation Act or Cape Cod Land Bank Projects**

To see if the Town will vote to raise, borrow and/or appropriate \$Total Project Cost for the acquisition by gift, negotiated purchase or eminent domain of a parcel of land of approximately \_\_ +/-acres owned by OWNER as described on Assessors Map \_\_, Parcel \_\_, to be managed and controlled by the Conservation Commission of the Town of XXX in accordance with Chapter 40, Section 8C for conservation and passive recreation purposes, and to meet said appropriate with funds transferred and/or borrowed in accordance with M.G.L. Chapter 293, the Community Preservation Act [or Cape Cod Land Bank Act], and to authorize the Treasurer, with the approval of the Board of Selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by M.G.L. Chapter 44, or any other enabling authority, and that the Town Manager [or Board of Selectmen] be authorized to file on behalf of the Town of XXX any and all applications deemed necessary under the Self-Help Act (M.G.L. Chapter 132A, Section 11) [or LWCF or USH] or any other applications for funds in any way connected with the scope of this acquisition, and the Town Manager and the Board of Selectmen and the Conservation Commission be authorized, as they deem appropriate, to enter into all agreements and execute any and all instruments including the conveyance of a perpetual conservation restriction in accordance with M.G.L. Chapter 184 as required by Section 12(a) of Chapter 44B or Chapter 293 Section 10 of the Acts of 1998 as amended, as may be necessary on behalf of the Town of XXX to affect said purchase. Said conservation restriction may be granted to the [Name of Grantee] or any other organization qualified and willing to hold such a restriction.

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*1 Attorney Doug Bialecki and the Attorney Referral Panel of the Massachusetts Land Trust Coalition*